



December 2011

State's Attorney

Birch P. Burdick

Cass County Merchants

Assistant State's Attorneys:

Mark R. Boening
Tracy J. Peters
Leah J. Viste
Reid A. Brady
Kara Schmitz Olson
Gary E. Euren
Kimberlee J. Hegvik
Cherie L. Clark
Tristan J. Van de Streek
Ryan J. Younggren
Renata J. Selzer
Tanya Johnson Martinez

Victim/Witness Coordinators:

Brenda Olson-Wray
Debbie Tibiatowski
Lori Lawson

Check Division/ Restitution:

Josi Schultz
Charlotte Eversvik

Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

PH: 701-241-5850
Fax: 701-241-5838

RE: Criminal Prosecution of Nonsufficient Funds (NSF) and Closed Account Checks -2011 Update

Dear Merchant:

I write to inform you of a change in the policy of the Cass County State's Attorney's Office with respect to non-sufficient fund and closed account checks. As you are aware, for some time this office has been prosecuting NSF checks and closed account checks when the merchant who accepted the check was personally able to identify the issuer even though the merchant did not obtain identification. This practice has led to problems in the sheriff's office when the person who issued the bad check has a common name. When this happens, law enforcement devotes many hours to trying to determine which "John Jones" should be hailed into court.

In an effort to avoid this problem, I have promulgated the enclosed revised Policy on Criminal Prosecution of Insufficient Funds and Closed Account Checks. As you will note, this office will only prosecute bad checks when the merchant writes the issuer's identification number and date of birth shown on the identification card. Or, in the case of non-driver photo identification, the merchant must write the identification issue date.

The enclosed updated policy and forms reflect 2011 Legislative changes and are effective as of **August 1, 2011**. **Please discard all prior policies and forms.**

1. Cass County State's Attorney Policy on Prosecution of Non-sufficient Fund and Closed Account Checks (Rev. Oct 2011): This document explains how this office processes bad check matters. It contains significant changes from the previous revision, specifically in **paragraph 4**. I encourage you to read it thoroughly.
2. Notice of ID Requirement for Checks: **For law enforcement purposes, the merchant is required to review the ID and date of birth on all checks that may be submitted to our office for prosecution.** From time-to-time, some customers may complain about a merchant requiring them to produce ID. In those cases, the merchant may wish to show the customer there is a law enforcement reason for the requirement. Accordingly, for the merchant's assistance, I have enclosed a brief Notice of ID Requirement. While the ID requirement is mandatory, the use of the enclosed Notice is entirely at the merchant's discretion. A merchant may wish to keep that notice at the cash register, so he/she may direct a concerned customer's attention to that language.

3. Notice of Dishonored Check (example): North Dakota law requires a Notice of Dishonored Check, substantially similar to the enclosed form, be sent prior to presenting a check to the State's Attorney's Office for prosecution. The enclosed form is provided as an example.
4. Affidavit of Service by Mail (example): North Dakota law requires proof of mailing a Notice of Dishonored Check. That proof may be made by return receipt or by an Affidavit of Mailing signed by the individual making the mailing. The enclosed form is provided as an example.
5. Affidavit of Insufficient Funds or Closed Account Checks: This form must be used for any check submitted to the Cass County State's Attorney's Office for consideration of prosecution. A separate affidavit must be completed for each check, even if multiple checks on the same account are submitted to our office.

The enclosed policies and forms are intended to balance the merchant's needs, our prosecutorial needs and the statutory requirements. The policy is similar to these used in other urban areas within our region. While the enclosures are similar to our previous ones, we have made some changes. I encourage you to review the policy and ensure your practice is consistent with it.

From time-to-time we receive questions about "pay day" loans. The 2001 North Dakota Legislature passed requirements governing those transactions. The enclosed policy is not meant to address those situations. The statutes generally prohibit us from prosecuting postdated checks under the "bad check" statutes.

The enclosures apply to those merchants who choose to submit bad checks to our office for prosecution. If you choose not to submit checks for prosecution, then you are not required to comply with our office policy.

Charlotte Eversvik is the check specialist in our office. If you have questions regarding the enclosures or our policy, then please feel free to contact Charlotte at (701) 241-5855 or (701) 241-5850. Thank you.

Sincerely,



Birch P. Burdick
Cass County State's Attorney

Enclosures:

1. Policy on Criminal Prosecution of Insufficient Funds and Closed Account Checks
2. Notice of ID Requirement for Checks
3. Notice of Dishonored Check
4. Affidavit of Service by Mail
5. Affidavit of Insufficient Funds or Closed Account Checks



December 2011

RE: Notice of ID Requirement for Checks

State's Attorney

Birch P. Burdick

To Whom it May Concern:

To assist law enforcement's efforts, the Cass County State's Attorney's Office requests area merchants verify photographic identification (ID) of anyone submitting a check for payment to that merchant. It further requests the merchant to write certain ID information on the check. These steps provide a measure of protection for everyone that both writes and accepts checks, and assists our office with the prosecution of "bad checks".

Please extend your cooperation to Cass County merchants when they ask for your ID. Thank you.

Sincerely,

Birch P. Burdick
Cass County State's Attorney

Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

PH: 701-241-5850
Fax: 701-241-5838

CASS COUNTY STATE'S ATTORNEY
POLICY ON CRIMINAL PROSECUTION OF
INSUFFICIENT FUNDS AND CLOSED ACCOUNT CHECKS

The Cass County State's Attorney's Office (hereafter "SAO") will consider prosecution on insufficient fund (NSF) and closed account (also known as "no account") checks under North Dakota Century Code Chapter 6-08 only when all of the following criteria are met. The term "merchant" as used below relates to any party, and their employee(s), that accepts a check and intends to submit that check to the SAO for prosecution.

1. **ID REQUIRED:** The merchant must review a photo ID (drivers' license preferred of the check writer). The merchant must **write on the check** the ID number **and** date of birth shown on the ID. In the case of a non-driver photo ID, the merchant must write the ID issue date. It will not be sufficient for the merchant merely to ask if everything on the check is correct. It will not be sufficient for the merchant merely to review a social security card and report social security numbers on the face of the check as if a ND driver's license number.

ID numbers are verified by the SAO. The SAO will decline for prosecution any checks where the ID information reported by the merchant is not valid.

2. **WRITTEN NOTICE/PROOF OF SERVICE:** Before submitting checks to the SAO for prosecution the merchant, or their agents, must prepare a written notice of dishonor for each check to the check writer. If the check is drawn on a business account, notice must still be served on the check writer, not the business. The notice must, among other things, give the check writer **ten (10)** days from receipt of the notice to pay the check. The merchant must also serve that notice upon the check writer. It is sufficient to serve that notice by mail. The merchant must also obtain proof of such service. For the purpose of this policy, proof of service by mail may be made by obtaining a return receipt (certified mail) or by preparing an affidavit of mailing signed by the individual making the mailing. A letter alone will not serve as Notice unless it is substantially similar to the form.

3. **PREPARING AFFIDAVIT OF INSUFFICIENT FUNDS OR NO ACCOUNT CHECKS/FILING WITH SAO:** The person who actually accepted the check, whether that is the merchant or the merchant's employee (no exceptions), must complete an Affidavit of Insufficient Funds or No Account Checks. The merchant must then file the following four things with the SAO: **(1)** the Affidavit of Insufficient Funds or No Account Checks; **(2)** the original check; **(3)** a copy of the written notice of dishonor; and **(4)** proof of service (e.g., affidavit of service by mail or return receipt).

4. **STATUTE OF LIMITATIONS:** In general, prosecution for all bad checks must be filed with the court by the SAO within **one hundred twenty (120)** days after dishonor by the drawee. Therefore, it is the policy of the SAO that the merchant or their agent must submit all NSF or Closed Account checks to the SAO no more than **ninety (90)** days after dishonor. That time frame will allow the SAO time to review the facts, prepare the necessary papers and timely file any necessary documents with the court.

5. **EXCLUSIONS:** The making of a postdated check knowingly received as such, or a check issued under an agreement with the payee that the check not be presented for payment for a specified time, is not a violation of state statute and cannot be prosecuted by the SAO. The SAO cannot prosecute two-party checks and refer-to-maker checks because they are neither insufficient funds nor closed account checks. The SAO will no longer prosecute rent checks or payroll checks due to evidentiary issues arising with these types of checks. The merchant should present to local law enforcement for investigation checks that are returned as forgeries. The merchant should also present to local law enforcement checks that are returned with a "stop payment" stamp, if the merchant feels that payment was stopped to intentionally defraud the merchant. If the check is excluded under this section, the merchant may be able to pursue remedies through civil means such as small claims court. Refer also to section 8 below.
6. **MINIMUM DOLLAR AMOUNT:** Checks returned for insufficient funds or as closed account checks that are written for \$50.00 or less will not be prosecuted. However, if the merchant wants to proceed with the required paperwork, they may send the checks to the SAO and our office will hold them until the statute of limitations of 120 days has passed. If our office receives checks to aggregate a total of at least \$50.01, we will proceed with prosecution. All of the aggregated checks must meet the standard requirements for check prosecution.
7. **QUALIFICATIONS:** The check must be presented for payment within **fourteen (14)** days of the date the check was received and must have a bank stamp of NSF or Account Closed on it. Checks that have been presented for payment twice (not required by statute), being NSF on the first presentation and account closed on the second are considered to be NSF. The status of the account is determined when the check is first presented for payment.
8. **JURISDICTION:** The SAO will only accept checks that are written in Cass County and passed by persons living in North Dakota or a border state. The SAO will not accept checks issued by people living in Canada. Furthermore, the SAO reserves the right to decline prosecution of any insufficient funds or closed account check where the bank or depository upon which the check is drawn is located in another state or country as a reasonable exercise of prosecutorial discretion in allocating limited prosecutorial resources.
9. **NOTIFICATION OF PAYMENT RECEIVED:** If a merchant directly receives payment of the insufficient funds or closed account check after the check has been turned over for prosecution, then the Restitution Department in the SAO must be notified immediately at 241-5855. Payment of such check is not a factor in the SAO's decision about whether to proceed with prosecution.

[NOTE: The above policy is intended to reflect, among other things, the requirements found in North Dakota Century Code Chapter 6-08. If for any reason there are conflicts between this policy and the referenced statutes, the requirements of the statutes will prevail.]

Birch P. Burdick
Cass County State's Attorney

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

The State of North Dakota,)
Plaintiff,)
)
vs.)
)
)

**Affidavit of Insufficient Funds
Or Closed Account Checks**

Defendant (check writer)

STATE OF NORTH DAKOTA)
)§
COUNTY OF CASS)

I, _____, depose and state that on _____, I accepted
Affiant (Print your name legibly) (date of check)
a check from _____ which was drawn on the _____.
(check writer) (bank)

This check was returned by the bank because the drawer either did not have sufficient funds or did not have an account.

Affiant swears that: Affiant looked at a photo ID, affiant wrote the ID number on the check, and affiant wrote the date of birth on the check to verify the check writer's identity;

Affiant made no agreement with the check writer to hold the check.

Affiant did not agree to accept this check as a post-dated check.

Affiant's basis for knowing the above is that affiant is the _____ for _____.
(your title) (business name)

Affiant states that the above and foregoing is true and correct to the best of their knowledge.

The affiant acknowledges that false written statements to the State's Attorney's Office may result, at a minimum, in losing the service of that office for prosecution of NSF/Closed Account checks.

Dated this _____ day of _____, 20_____.

(signature) Affiant

(business name)

(business address)

(city, state, zip)

(phone number)

DIRECTIONS FOR AFFIDAVIT

1. Attach original check here to front of this Affidavit.
2. Attach copy of Notice of Dishonor and Proof of Mailing to back of this Affidavit.
3. Return to: Cass County State's Attorney, 211 9th Street South, PO Box 2806, Fargo, ND, 58108-2806;
(701) 241-5850.

NOTICE OF DISHONORED CHECK

Date _____

Name of Issuer _____

Street Address _____

City and State _____ Zip _____

You are according to law notified that a check dated _____,
_____, drawn on the _____

Bank of _____ in

the amount of \$_____ has been refused because
of (non-sufficient funds) **or** (the drawer does not have an account).

Within ten days from the receipt of this notice, you must pay or tender to
(Holder or Agent or Representative) sufficient moneys to pay such
instrument in full and any collection fees or costs not in excess of thirty-five
dollars.

STATE OF NORTH DAKOTA)
) §
COUNTY OF CASS)

**AFFIDAVIT OF SERVICE
BY MAIL**

_____, being first duly sworn on oath, deposes and states that he/she is
of legal age and that on (date) _____, _____, he/she served the attached **Notice of
Dishonor**, by placing a true and correct copy thereof securely enclosed in an envelope
addressed as follows:

and depositing the same, with postage prepaid, in the United States mails at _____,
North Dakota.

(signature)

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public
Cass County, North Dakota

(SEAL)